

# HOUSE . . . . . No. 605

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## The Commonwealth of Massachusetts

PRESENTED BY:

**Denise Provost**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act protecting school children from environmental toxins.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Denise Provost	27th Middlesex
Brian A. Joyce	Norfolk, Bristol and Plymouth
Cory Atkins	14th Middlesex
Stephen R. Canessa	12th Bristol
Linda Dorcena Forry	12th Suffolk
Jay R. Kaufman	15th Middlesex
Jennifer M. Callahan	18th Worcester
Barbara A. L'Italien	18th Essex
Ellen Story	3rd Hampshire
Timothy J. Toomey, Jr.	26th Middlesex
Alice K. Wolf	25th Middlesex
Patricia D. Jehlen	Second Middlesex
Jennifer Benson	37th Middlesex
Carolyn Dykema	8th Middlesex
Steven J. D'Amico	4th Bristol
Lori Ehrlich	8th Essex
Sean Garballey	23rd Middlesex
Jonathan Hecht	29th Middlesex
Kay Khan	11th Middlesex

Jason Lewis	31st Middlesex
Elizabeth A. Malia	11th Suffolk
Byron Rushing	9th Suffolk
David B. Sullivan	6th Bristol
Matthew C. Patrick	3rd Barnstable
Carl M. Sciortino, Jr.	34th Middlesex
Linda Dean Campbell	15th Essex

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT PROTECTING SCHOOL CHILDREN FROM ENVIRONMENTAL TOXINS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. This Act maybe cited as the 'Public School Sites Protection Act of 2009.

SECTION 2. This bill is intended to protect children and personnel of public school in Massachusetts from exposure to environmental toxins, and consequent damage to health.

SECTION 3. Section 3 of Chapter 21A of the General Laws, as so appearing, is hereby amended by inserting after subsection 3(e) the following section:

Section 3 (1) (i) the department of environmental protection, in consultation with the department of public health, shall promulgate regulations based on the best available science, to establish health risk assessment guidelines and procedures for evaluating proposed sites for the construction, expansion, or acquisition, by lease, purchase or otherwise, of sites for publicly-funded schools, including charter schools.

(ii) Such regulations shall require, at minimum, that the public body responsible for a proposed school siting conduct a public participation plan for the siting process, to be approved by the department, and that such public body conduct an Initial Environmental Assessment (IEA) for any site it proposes. The public body shall be required to hire a licensed environmental professional, with credentials to be determined by the department of environmental protection, to conduct an Initial Environmental Assessment (IEA), the scope and content of which shall be set forth in the regulations of the department, and which shall include information on current and past site uses, contamination, and potential sources of pollution, to determine whether the site was likely contaminated by hazardous substances.

Such regulations shall require that the IEA identify any of the following sources of contamination within two miles of a proposed school site:

A) Any known or suspected hazardous, industrial, or municipal waste disposal site;

- B) Any private, commercial, industrial, military, or government facility where toxic chemicals were used, stored or disposed of;
- C) Refineries, mines, scrap yards, factories, dry cleaning facilities or sites where there have been chemical spills or other significant contamination;
- D) US EPA or state designated Brownfield site (even if remediated);
- E) Facilities found on EPA's Toxic Release Inventory (TRI);
- F) Agricultural land where pesticides and herbicides have been applied;
- G) Dust generators such as fertilizer or cement plants, or saw mills;
- H) Leaked gasoline or other products from underground storage tanks;
- I) Concentrated electrical magnetic fields from high intensity power lines and cellular communication towers;
- J) Freeways, highways, or other roadways that, on an average day, has traffic in excess of 50,000 vehicles;
- K) Railroad yards and beds; and
- L) Wastewater treatment plants.

If a proposed site was previously used for hazardous or garbage waste disposal, or for disposal of construction and demolition materials, or if it is within 1,000 feet of any property used for these purposes, then the site shall be excluded from consideration for use as a school.

The department of environmental protection shall provide that it review the final draft of the Initial Environmental Assessment. DEP may give preliminary approval to the assessment, disapprove the assessment, request more information, or exclude the site from school use. When the final draft of the IEA is complete and has received preliminary approval by the DEP, the Public Body shall publish and otherwise disclose to the public such information as DEP shall by regulation require; proceed with its approved public participation plan, and vote on whether to continue its consideration of a site.

If a proposed site is within 1,000 feet of any potential source of contamination including those listed as items A-L above, the department shall by regulation require that a Preliminary Endangerment Assessment (PEA), be conducted. A PEA shall also be required if any data or information collected in the Initial Environmental Assessment reveals that the site, or any portion of the site, is subject to serious hazardous chemical exposures from any source.

If a PEA is not otherwise required as stated above, then the licensed environmental professional shall determine whether a PEA is warranted for a proposed site, and shall state in writing the facts that provide the basis for this determination. DEP shall by regulation provide for the scope and content of the PEA, including risk assessment methodologies, descriptions of all pathways of exposure to any toxic substances on or near the site, and description of the health consequences of exposure to such substance.

If existing contamination is discovered as at the site, the levels found should be compared to the Brownfield Cleanup Program soil cleanup standards for unrestricted use developed by the New York State Department of Environmental Conservation, or such other, similar standards as the department of environmental protection may by regulation designate.

If contaminant levels exceed any of these values, a PEA shall be conducted. If any portion of a proposed

62 site is contaminated, then the entire site must undergo a PEA.

63 The department of environmental protection will review all comments received on the Preliminary  
64 Endangerment Assessment, and will then accept or reject the conclusion of the assessment, and  
65 recommend whether the site can be used without further remediation or study, whether the site is  
66 categorically excluded for use as a school, or whether further study is required. DEP shall explain its  
67 reasons for accepting or rejecting the assessment. Once DEP has approved the Preliminary  
68 Endangerment Assessment, the public body shall review the assessment and public comments  
69 received.

70 The Public Body shall then, subject to its approved public participation plan, consider the PEA and  
71 comments on it. It shall then vote whether to abandon the site, proceed with a remediation plan, or  
72 to consider an alternative site.

73 DEP shall, by regulation, adopt criteria and methodologies for the cleanup of contaminated sites  
74 and mitigation of health hazards on sites deemed otherwise suitable for use as schools.

75 SECTION 4. Mass DEP shall publish testing reports on its website all Initial Environmental  
76 Assessments and Preliminary Endangerment Assessments submitted to it, and otherwise make them  
77 available to the public.

78 SECTION 5. Section 3 Chapter 70B of the General Laws, so as appearing, is hereby amended by  
79 inserting the following paragraph:

80 The Massachusetts School Building Authority shall provide all applicants with the DEP's applicable  
81 regulations. MSBA shall neither approve nor provide financial support to a project until it has  
82 completed the site evaluation process provided by law, and received all required approvals.

83 SECTION 6. The Massachusetts Development Finance Agency shall inform all applicants for grants or  
84 loans with the department of environmental protection's applicable regulations. The Massachusetts  
85 Development Finance Agency shall provide no financial support, whether grant, loan, loan guarantee,  
86 or any other financing or financial aid, to any school project until the applicant has completed the site  
87 evaluation process provided by law, and received all required approvals.

88 SECTION 7. The department of environmental protection, or any group of ten aggrieved citizens,  
89 may apply to the superior court for relief for any alleged violation of this act, and the regulations  
90 adopted pursuant to it.

91 SECTION 8. Definitions

92 "school" shall mean an educational facility, from pre-kindergarten through grade 12, which is funded  
93 in whole or in part by public funds, including charter schools.

94 "public body" shall mean a school committee, regional school district, board of directors of a charter  
95 school or any other lawfully constituted body authorized to locate, re-locate, build, reconstruct, expand,  
96 or renovate a school within the Commonwealth of Massachusetts.